a

KENWOOD ELECTRONICS (MALAYSIA) SDN BHD

v.

PEOPLE'S AUDIO SDN BHD & ORS

b

HIGH COURT MALAYA, PULAU PINANG
SU GEOK YIAM JC
[CIVIL SUIT NO: 22-54-2000]
2 DECEMBER 2002

c ***CIVIL PROCEDURE:*** *Discovery - Discovery and inspection of documents - Whether documents relevant - Whether order to disclose documents would shift legal burden from plaintiff to defendants - Whether defendants ought to be compelled to disclose documents although likely to be self-incriminatory - Whether doctrine of res judicata applicable*

d This was an application by the plaintiff pursuant to O. 24 of the Rules of the High Court 1980 compelling the second, third and fourth defendants ('the defendants') to make further and better discovery of documents in favour of the plaintiff. The grounds of the application were that in light of the plaintiff's allegation of fraud on the part of the defendants, they had not disclosed in their list of documents certain documents relating to the issue of whether or
e not the fourth defendant sold Kenwood audio-visual equipment originally supplied by the plaintiff to the first defendant for sale only to retailers. The plaintiff alleged that there was evidence that such documents existed and that the defendants knowingly omitted to disclose such documents in the said list of documents.

f The issues that required determination by the court were whether: (1) the documents were relevant; (2) an order of court compelling the defendants to disclose and produce the documents concerned for inspection would have the effect of shifting the legal burden from the plaintiff to the defendants; (3) the defendants should be compelled to disclose and produce for inspection the
g documents concerned on the ground that the documents were within their special knowledge although the documents were likely to incriminate them; and (4) the doctrine of *res judicata* was applicable in view of the earlier order of Mohd Raus Sharif J dismissing the plaintiff's appeal against the decision of the learned deputy registrar in respect of the plaintiff's application for interrogatories.

h **Held:**

[1] Although the documents concerned were relevant to show whether the fourth defendant sold the said goods and received payment for the said goods, the documents were not relevant to the plaintiff's cause of action for
i conspiracy to defraud against defendants because there was no material

advanced by the plaintiff other than allegations that the documents concerned would show that the defendants intended from the very beginning to use the veil of incorporation of the first defendant to acquire the said goods from the plaintiff and to use the fourth defendant as a vehicle in order to sell the said goods with the object of defrauding or cheating the plaintiff. (p 446 g-h)

[2] An order of court compelling the defendants to disclose and produce documents concerned for the inspection of the plaintiff would have the effect of shifting the legal burden of proof, *ie*, to prove conspiracy to defraud, from the plaintiff to the defendants. It was trite that the burden of proof rested throughout on the plaintiff. (pp 446 h & 447 a)

[3] The plaintiff's application should not be granted although the documents were specially within the knowledge of the defendants because the documents were likely to incriminate them. (p 447 c)

[4] The doctrine of *res judicata* was applicable because there were substantial and material similarities between the intended interrogatories and the documents concerned, and that the plaintiff's application was an attempt to circumvent the decision of Mohd Raus Sharif J. (p 447 d)

[Application dismissed.]

Case(s) referred to:

Faber Merlin Malaysia Bhd v. Ban Guan Sdn Bhd [1981] 1 MLJ 105 FC ***(refd)***

Format Communications Mfg Ltd, v. ITT (United Kingdom) Ltd [1983] FSR 473 ***(refd)***

Gamlen Chemical Co (UK) Ltd v. Rochem Ltd & Ors [1983] RFC 1 ***(dist)***

Ho Tong Cheong & Ors. v Overseas-Chinese Banking Corpn Ltd [1967] 2 MLJ 70 ***(refd)***

Manilal & Sons (Pte) Ltd v. Bhupendra Kumar J Shan [1990] 2 MLJ 282 ***(refd)***

Mary Ng v. R [1958] AC 173 ***(foll)***

R v. Edwards [1974] 2 All ER 1085 ***(not foll)***

Sykt Chin Seng Supermarket v. United Continental Insurance Sdn Bhd [1997] 5 MLJ 121 HC ***(refd)***

Tan Lay Soon v. Kam Mah Theater Sdn Bhd (Malayan United Finance Bhd, Intervener) [1992] 4 CLJ 1922; [1992] 3 CLJ (Rep) 657 HC ***(refd)***

The Compagnie Financiere Et Commerciale Du Pacifique v. The Peruvian Guano Co [1882] 11 QBD 55 ***(refd)***

Triplex Safety Glass Co Ltd, v. Lancegaye Saftey Glass (1934) Ltd [1939] 2 KB 395 ***(refd)***

Legislation referred to:

Evidence Act 1950, ss. 14, 106, 109, 114(g)

Rules of the High Court 1980, O. 24, O. 25, O. 26 r. 9

Other source(s) referred to:
Sir Alexander Kingcome Turner, *The Doctrine of Res Judicata*, Butterworths, London, 2nd edn 1967, pp 132-134

For the plaintiff - K Shanmuga; M/s Kanesalingam & Co
For the defendants - Clement Cheng Yew Min; M/s John Heah & Co

[The plaintiff has appealed to the Court of Appeal vide Civil Appeal No: P-02-778-2002]

Reported by Suresh Nathan

JUDGMENT

Su Geok Yiam JC:
Enclosure 42 is an application by the plaintiff *vide* a summons in chambers filed on 7 November 2001 to compel the 2nd, 3rd and 4th defendants to make further and better discovery of documents in favour of the plaintiff.

Grounds Of The Plaintiff's Application
The plaintiff's application is made pursuant to O. 24 of the Rules of the High Court 1980 (hereinafter referred as "the RHC 1980"). The grounds of the application are that in the light of the allegation by the plaintiff of fraud on the part of the 2nd, 3rd and 4th defendants, the 2nd, 3rd and 4th defendants have not disclosed in their list of documents filed on 18 October 2001 (encl. 40) (hereinafter referred to as "the said list of documents") documents relating to the issue of whether or not the 4th defendant sold Kenwood audio-visual equipment originally supplied by the plaintiff to the 1st defendant for sale only to retailers between the months of November 1997 and April 1998 (hereinafter referred to as "the said goods"). The plaintiff alleges that there is evidence that such documents exist or did exist and that the 2nd, 3rd and 4th defendants have knowingly omitted to disclose such documents in the said list of documents.

The plaintiff also relies on the following grounds as contained in its affidavit-in-support (encl. 42A) and affidavit-in-reply (encl. 43) affirmed on 2 November 2001 and 4 January 2002, respectively, by Yap Kim Yin, the administrative manager of the plaintiff, and filed on 7 November 2001 and 12 January 2002, respectively and the affidavit (encl. 14) affirmed by Teh Seng Teong, on 12 November 1998 and filed on 12 November 1998 to support the plaintiff's application (encl. 15) to join the 2nd, 3rd and 4th defendant as co-defendants:

(1) the plaintiff believes that a limited liability company such as the 4th defendant in this action, carrying on business as traders, would in the

normal course of its business of buying and selling goods have or had at sometime in their possession, custody or power a copy of the documents or the classes of documents specified in the schedule attached to the plaintiff's summons in chambers (encl. 42) being the usual documents generated by all dealers in the usual and ordinary course of business when dealing with the sale and purchase of goods;

(2) the plaintiff believes that the 2nd and 3rd defendants who are the only directors of the 1st and 4th defendants have acted fraudulently because they have not disclosed two documents in the said list of documents, to wit, a delivery order No. 8527 dated 7 March 1998 issued by the 4th defendant to M/s Star Electric Sales & Service Sdn Bhd of Man Batu Uban, Pulau Pinang and an invoice No. 8404 dated 14 April 1998 issued by the 4th defendant to M/s Hock Loong Electrical & Credit of 497-501, Jalan Pasir Puteh, 31650 Ipoh (exhs. "TS5" and "TS6", encl. 13);

(3) the plaintiff believes that based on the two documents described in sub-para. (2) above and other documents in the possession, custody and power of the 4th defendant, the 4th defendant which was previously a wholesaler of Kenwood audio-visual equipment and because of the goodwill it enjoyed, continued to sell and to receive payment for the said goods;

(4) the 3rd defendant in para. 4 of his affidavit verifying the said list of documents affirmed on 18 October 2001 and filed on the same date (encl. 41) has failed to verify the truth of para. 5 of the said list of documents (encl. 40) which states that he does not have nor previously, had in his possession, custody or power any documents relating to the action other than the documents specified in the said list of documents (encl. 40);

(5) the plaintiff believes that based on the advice of the plaintiff's solicitors and s. 106 of the Evidence Act 1950 what became of the said goods is solely within the knowledge of the 2nd and 3rd defendants being directors of the 1st defendant and cannot possibly be known by any of the plaintiff's servants, officers or agents and therefore, the 2nd and 3rd defendants bear the evidential burden and must disclose those facts or documents in order to enable the plaintiff to fulfil its legal burden of proving those facts and documents;

(6) the documents sought for by the plaintiff are very relevant to the plaintiff because the documents comprise the evidence needed to prove the facts relating to the plaintiff's allegation of fraud against the 2nd, 3rd and 4th defendants and the state of mind of the 2nd and 3rd defendants and must be disclosed, no matter how numerous;

(7) the plaintiff denies that its application is an attempt to circumvent the decision of Md Raus bin Sharif, J in respect of the plaintiff's application for interrogatories;

(8) the plaintiff believes that its application for interrogatories was dismissed on the ground that the interrogatories were prolix and too numerous to answer; and

(9) the plaintiff believes that the 2nd and 3rd defendants used the separate legal entities of the 1st and 4th defendants which they control in order to evade their contractual liabilities, to defraud their creditors by obtaining goods without paying for them and setting up a scheme whereby they cannot in the ordinary way be successfully sued for payment.

In their affidavit-in-reply affirmed by the 2nd defendant on 26 December 2001 and filed on 27 December 2001 (encl. 44) the 2nd, 3rd and 4th defendants:

(1) deny that the documents sought for by the plaintiff which the plaintiff says show to whom and the manner in which the defendants sold the said goods are relevant to the plaintiff's cause of action which is conspiracy by the 2nd, 3rd and 4th defendants to defraud the plaintiff because the plaintiff must prove that the 2nd, 3rd and 4th defendants had the intention right from the very beginning to defraud the plaintiff and that the defendants never had the intention to pay for the grounds in the first place;

(2) say that such documents are only relevant if the plaintiffs claim is for the repossession or recovery of the said goods;

(3) say that s. 109 of the Evidence Act 1950 is inapplicable and that the plaintiff cannot shift its burden of proof to the 2nd, 3rd and 4th defendants in order to prove the plaintiff's claim; and

(4) say that the plaintiff's application is oppressive and an abuse of the process of the court because the plaintiff's summons in chambers filed on 24 November 2000 for leave to serve on the defendants interrogatories concerning the whereabouts of the said goods was dismissed by the learned deputy registrar on 23 June 2001 and the plaintiff's appeal to the judge in chambers was dismissed with costs on 8 October 2001 and the plaintiff has appealed to the Court of Appeal and that the plaintiff's application is not *bona fide* being an attempt to circumvent the decisions of the deputy registrar and the learned judge.

Facts And Background

The facts and background of the case are as follows:

The plaintiff is the Malaysian sub distributor of a Japanese multinational manufacturer and seller of electronic equipment, and sells the Kenwood brand of electronic audio-visual equipment. The 1st defendant is a limited company. The 1st defendant had agreed with the plaintiff to sell the said goods to retailers and to pay the plaintiff the wholesale price from the proceeds of sale. The 1st defendant failed to pay the plaintiff on the expiry of the 60 days credit period and thereafter despite demands from the plaintiff, in particular, a notice of demand dated 12 March 1998. The plaintiff's claim filed on 24 April 1998 in the Shah Alam High Court against the 1st defendant is for a sum of RM1,146,681.18 (hereinafter referred to as "the said sum") being the purchase price for the said goods together with interest thereon at 8% per annum from 1st April 1998 until full realisation and costs of the action. D

The plaintiff has set out the particulars of the respective invoice dates, invoice/ credit note numbers, the breakdown of the said sum and the delivery order numbers in its statement of claim. The 1st defendant entered appearance on 11 June 1998 (encl. 2).

On 18 June 1998 the 1st defendant through its solicitors, M/s. Syarikat Ng & Anuar, filed its statement of defence (encl. 3). In its statement of defence the 1st defendant denied the debt, and without condescending to particulars contended the goods did not possess written warranties, were of unmerchantable quality, were unfit for their purposes, not according to the agreed specifications and were defective resulting in the 1st defendant's customers returning the goods thereby causing the 1st defendant to suffer loss. The 1st defendant also denied receiving the plaintiff's notice of demand in respect of the said sum or, alternatively, that the notice of demand was invalid because the plaintiff's claim was unfounded.

On 24 September 1998, the 1st defendant applied *vide* a summons in chambers (encl. 9) for the action to be transferred to the Penang High Court.

On 13 November 1998, the plaintiff applied *vide* a summons in chambers (encl. 15) which was allowed by the court on 8 April 1999, to include the 2nd, 3rd and 4th defendants as co-defendants in this action. The grounds as stated in the plaintiff's supporting affidavit (encl. 14), affirmed by Teh Seng Teong, the plaintiff's general manager, on 12 November 1998 are, *inter alia*, that the 2nd and 3rd defendants who are directors of the 1st defendant, cannot agree with each other, the 2nd and 3rd defendants are also the directors of the

4th defendant, they own 50% of the shares in the 4th defendant whilst the 4th defendant in turn owns 90% of the shareholding in the 1st defendant, both the 1st and 4th defendants also have the same business address, there is no intention whatsoever on the 1st defendant's part to settle the plaintiff's claim and more, importantly, that the two directors are engaged in a conspiracy to defraud the plaintiff in the said sum and that the two directors are making use of the 4th defendant to sell the said goods to various dealers of Kenwood audio-visual equipment. The plaintiff exhibited copies of a delivery order and an invoice issued by the 4th defendant to two dealers of Kenwood audio-visual equipment to support the plaintiff's allegation that the two directors had adopted a fraudulent scheme whereby they purchased the said goods in the name of one limited liability company, ie, the 1st defendant, and sold the said goods in the name of another limited liability company, ie, the 4th defendant, in order to avoid paying for the said goods by hiding behind the veil of incorporation of the 1st defendant. The plaintiff also exhibited the search reports (exhs. "TST3" and "TST4") from the registry of companies.

On 13 April 1999, the plaintiff filed an amended statement of claim (encl. 22). In the amended statement of claim, the plaintiff in addition to its claim against the 1st defendant for goods sold and delivered, further claimed for the said sum against the 2nd, 3rd and 4th defendants founded on a conspiracy to defraud pursuant to which the 2nd and 3rd defendants used the 1st and 4th defendants to defraud the plaintiff by purchasing goods from the plaintiff under the name of the 1st defendant and thereafter selling the goods under the name of the 4th defendant with the payments for the goods being made to and received by the 4th defendant instead of by the 1st defendant.

In view of the denials of the 1st defendant and its unsustainable defences it was hardly surprising when on 7 May 1999, the plaintiff succeeded in obtaining summary judgment against the 1st defendant for the said sum together with interest thereon at the rate of 8% and costs. However, since the judgment remains unsatisfied and according to the plaintiff the 1st defendant has no assets, the plaintiff is determined to pursue its claim for the said sum against the 2nd, 3rd and 4th defendants whom the plaintiff alleges have received the proceeds from the sale of the said goods by the 4th defendant, either by cheque or in cash, although the invoices were issued in the name of the 4th defendant.

On 19 May 1999, the 2nd, 3rd and 4th defendants entered their appearance. On 16 June 1999, the 2nd, 3rd and 4th defendants filed their statement of defence. In the statement of defence (encl. 26) the 4th defendant, denies owing the plaintiff the said sum, denies it bought or sold the said goods, denies that

it is the principal or undisclosed principal of the 1st defendant and states that it is a former dealer of the plaintiff with whom the plaintiff had no further dealings after the appointment of the 1st defendant as a wholesaler.

Plaintiff's Summons For Directions

On 24 November 2000, the plaintiff filed a summons for the following directions (encl. 32) under O. 25 of the RHC 1980:

(12) the plaintiff shall within 21 days serve on the defendant a list of documents and file an affidavit verifying such list;

(13) the defendants shall within 21 days serve on the plaintiff a list of documents and file an affidavit verifying such list;

(14) inspection of documents shall be carried out after service of the lists of documents;

(15) the plaintiff shall have leave to serve on the 2nd, 3rd and 4th defendants the interrogatories as shown in the accompanying documents, and that the 2nd, 3rd and 4th defendants shall answer the interrogatories by way of affidavit within 21 days;

(28) the trial is estimated to take four days with ten witnesses and the action shall be set down for trial within 120 days; and

(29) the costs of the application shall be costs in the cause.

The 2nd, 3rd and 4th defendants objected to the plaintiff's prayer in item 15 of the summons for directions in respect of the interrogatories which covered 18 pages and which in the main requires the 2nd, 3rd and 4th defendants to provide details of the transactions involving the said goods sold by the 1st defendant to the 4th defendant on the ground that the intended interrogatories were unreasonable and vexatious as the answers to the interrogatories will put the 2nd, 3rd and 4th defendants in an oppressive position.

On 23 June 2001, the learned deputy registrar dismissed the plaintiff's prayer in item 15 of the plaintiff's summons for direction with costs. The plaintiff appealed against the decision of the learned deputy registrar to the judge in chambers. On 8 October 2001 Md Raus bin Sharif, J dismissed the plaintiff's appeal with costs.

Plaintiff's Instant Application For Further And Better Discovery Of Documents

In the instant application, the plaintiff is seeking an order of the court to compel the 2nd, 3rd & 4th defendants to list, verify and produce the following documents:

(1) all invoices and delivery orders or office copies of all invoices and delivery orders issued by the 1st defendant for sale and/or conveyance by the 1st defendant of the said goods;

(2) all invoices and delivery orders or office copies of all invoices and delivery orders issued by the 4th defendant for the sale and/or conveyance by the 4th defendant of the said goods sold or conveyed by the 4th defendant;

(3) the receipt books or copies of receipts issued by the 1st, 2nd, 3rd and/or 4th defendants and their servants, officers and/or agents for payments received from the sale of the said goods;

(4) bank statements of the 1st, 2nd, 3rd and 4th defendants for the period of 24 months from the first date of purchase of the said goods by the 1st defendant from the plaintiff which occurred on or about 13 October 1997;

(5) inventory records for the said goods stored by the defendants or any of them; and

(6) any record made of the said goods purchased from the plaintiff by the 1st defendant specifying the make and serial number which remain unsold and which remain in the possession, custody or power of the defendants or any of them.

Submissions Of The Plaintiff's Counsel

Mr K Shanmuga, the learned counsel for the plaintiff, has submitted that first, the documents concerned are extremely relevant and highly probative and must be disclosed as provided for in O. 24 of the RHC 1980 and as decided in a number of cases, *viz*, *Faber Merlin Malaysia Bhd v. Ban Guan Sdn Bhd* [1981] 1 MLJ 105, FC; *The Compagnie Financiere Et Commerciale Du Pacifique v. The Peruvian Guano Co* [1882] 11 QBD 55, CA (England); *Sykt Chin Seng Supermarket v. United Continental Insurance Sdn Bhd* [1997] 5 MLJ 121, HC; *Manilal & Sons (Pte) Ltd v. Bhupendra Kumar J Shan (t/a JB International)* [1990] 2 MLJ 282, HC (Singapore); and *Format Communications Mfg Ltd, v. ITT (United Kingdom) Ltd* [1983] FSR 473, CA England.

Secondly, the plaintiff needs the documents which comprise the complete sales records of the subsequent resale of the said goods by the 4th defendant in order to prove its claim founded on fraud against the 2nd, 3rd and 4th defendants fully. The 2nd and 3rd defendants have made a handsome profit (or loot) for themselves by cheating the plaintiff who dealt with them in good faith. The bank statements of the 4th defendant will show how much the 2nd and 3rd defendants have personally pocketed, if the plaintiff's allegations are true. The

defendants have not credibly denied the existence of these documents. He relies on s. 14 of the Evidence Act 1950 and the case of G*amlen Chemical Co (UK) Ltd v. Rochem Ltd & Ors* [1983] RFC 1, HC (English Ch D).

Thirdly, these documents are in the exclusive control of the defendants. He relies on s. 106 of the Evidence Act 1950 and the case of *Ho Tong Cheong & Ors. v Overseas-Chinese Banking Corpn Ltd* [1967] 2 MLJ 70, FC (Singapore). These documents are relevant to the plaintiff's claim in order to prove facts which have been put in issue by the defendants themselves even if the documents are damaging to the defendants' case. If the defendants fail to produce these documents then the s. 114(g) presumption in the Evidence Act 1950 must be applied against them. The decision of Md Raus bin Sharif, J dismissing the plaintiff's application for interrogatories, was made in error and being only an interlocutory decision is capable of revocation or amendment by this court and the issue of *res judicata* does not arise. Alternatively, the application that was dismissed relate to interrogatories whereas the instant application is for further and better discovery of documents. He relies on O. 26 r. 9 of the RHC 1980, pp. 132 to 134 of the book, *The Doctrine of Res Judicata*, 2nd edn 1967, (Butterworths, London) by Sir Alexander Kingcome Turner, the decision of Edgar Joseph Jr, J (as His Lordship then was) in *Tan Lay Soon v. Kam Mah Theater Sdn Bhd (Malayan United Finance Bhd, Intervener)* [1992] 4 CLJ 1922; [1992] 3 CLJ (Rep) 657, and the grounds of judgment of Md Raus bin Sharif, J.

Submissions Of The 2nd, 3rd And 4th Defendants' Counsel

Mr Clement Cheng, the learned counsel for the 2nd, 3rd and 4th defendants, submitted that in cases involving fraud, the burden of proof is on the plaintiff to prove fraud on the part of the 2nd, 3rd and 4th defendants and not for the 2nd, 3rd and 4th defendants to prove fraud on their part. Since the plaintiff has in its possession the two documents (exhs. "TST5" and "TST6", encl. 13), they should proceed to use them to prove fraud against the 2nd, 3rd and 4th defendants and not go by way of discovery for other documents in order to prove fraud against the 2nd, 3rd and 4th defendants. He also submitted that what the plaintiff is requesting in the instant application has already been disallowed by the learned deputy registrar and confirmed by Md Raus bin Sharif, J. He explained that prayer (i) of encl. 42 is in substance similar to prayer 1 of the intended interrogatories (encl. 32). There are also other similarities between the prayers in encl. 42 and the prayers in the intended interrogatories (encl. 32). He further submitted that the plaintiff's application is an attempt to circumvent the decision of the learned judge which is pending appeal.

Issues For The Court's Determination

In order to dispose of the instant application the court has to consider and decide the following issues:

(1) whether the documents concerned are relevant;

(2) whether an order of court compelling the defendants to disclose and produce the documents concerned for inspection would have the effect of shifting the legal burden of proof from the plaintiff to the 2nd, 3rd and 4th defendants;

(3) whether the 2nd, 3rd and 4th defendants should be compelled to disclose and produce for inspection the documents concerned on the ground that the documents are within their special knowledge although the documents are likely to incriminate them; and

(4) whether the doctrine of *res judicata* is applicable here in view of the earlier order of Md Raus bin Sharif, J dismissing the plaintiff's appeal against the decision of the learned deputy registrar in respect of the plaintiff's application for interrogatories.

Decision Of The Court

On 9 September 2002, after hearing oral submissions from both the learned counsels and having considered the written submissions of the parties and the authorities cited by them the court dismissed the plaintiff's application (encl. 42) with costs.

The court did so because of the following reasons:

In respect of the first issue, the court is satisfied that although the documents concerned are relevant to show whether the 4th defendant sold the said goods and received payment for the said goods the documents are not relevant to the plaintiff's cause of action for conspiracy to defraud against the 2nd, 3rd and 4th defendants because there is no material advanced by the plaintiff other than allegations that the documents concerned will show that the 2nd, 3rd and 4th defendants intended from the very beginning to use the veil of incorporation of the 1st defendant to acquire the said goods from the plaintiff and to use the 4th defendant as a vehicle in order to sell the said goods with the object of defrauding or cheating the plaintiff. The *Gamlen* case is, therefore, distinguishable on its facts.

In respect of the second issue, the court is satisfied that an order of court compelling the 2nd, 3rd and 4th defendants to disclose and produce the documents concerned for the inspection of the plaintiff would have the effect

of shifting the legal burden of proof, ie, to prove conspiracy to defraud, from the plaintiff to the 2nd, 3rd and 4th defendants. It is trite that the legal burden of proof rests throughout on the plaintiff. The case of *Mary Ng v. R* [1958] AC 173 is applicable. The case of *R v. Edwards* [1975] QB 27, [1974] 2 All ER 1085 is inapplicable because the case deals with the shifting of the legal burden of proof where the law prohibiting the act also makes the prohibition subject to a proviso, exception, excuse or qualification.

In respect of the third issue, the court is satisfied that the plaintiff's application should not be granted although the documents are specially within the knowledge of the 2nd, 3rd and 4th defendants because the documents are likely to incriminate the 2nd, 3rd and 4th defendants. (See the case of *Triplex Safety Glass Co Ltd, v. Lancegaye Saftey Glass (1934) Ltd* [1939] 2 KB 395.)

In respect of the fourth issue, the court is satisfied that the doctrine of *res judicata* is applicable because there are substantial and material similarities between the intended interrogatories and the documents concerned and that the plaintiff's application is an attempt to circumvent the decision of Md Raus bin Sharif, J.